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A 67

SUMMARY REVIEW

OF THE

Laws of the United States

OF

NORTH-AMERICA,

THE

BRITISH PROVINCES AND WEST-INDIES.

With Observations, Precedents, &c.

BY A BARRISTER OF THE STATE OF VIRGINIA.

Sparsa coegi.

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SUMMARY REVIEW OF THE LAWS, &c.

C H A P. I.

General Observations upon the Laws of the United States, and those affecting Foreigners and British Debts, and particularly of the Laws in the State of Virginia.

IN a new government (says Raynal) the laws cannot be too simple, uniform and exact. The present government of the United States being only a reformation of that feudal system which they borrowed from Great Britain, still retains many usages equally oppressive and absurd; hence proceeds a motley mixture, numerous exceptions to, and various interpretations of, one original law, often clashing and contradicting each other, the new law at variance with the old. To the obscurities and difficulties of the common law of England, the States of America have added accumulated difficulties by a variety of new laws, adapted to the different changes of manners, place, and times.

A

As

As the common law itself is nothing but the practice and determination of courts on points of law, drawn into precedents *, where the circumstances of a country and a people, and their relation to the statutes and common law differ so greatly, the common law of these countries must, in its natural course, become different, and sometimes even contrary to the law of England. This renders the jurisdictions of these countries vague and precarious, and dangerous, if not arbitrary.

Smith, in his History of New York, has the following observation :

“ The state of our laws opens a door to much
 “ controversy. The uncertainty with respect to
 “ them renders property precarious, and greatly
 “ exposes us to the arbitrary decision of bad
 “ Judges. The common law of England is gene-
 “ rally received together with such statutes as were
 “ enacted before we had a Legislature of our own ;
 “ but our Courts exercise a sovereign authority
 “ in determining *what parts of the common and*
 “ *statute law* ought to be extended ; for it must
 “ be admitted, that the difference of circumstances
 “ necessarily requires us in some cases to reject the
 “ determinations of both. The practice of our
 “ Courts

* See Pownal's Administration of the Colonies.

“ Courts is not less uncertain than the law. Two
 “ things then seem absolutely necessary for public
 “ security; 1st, The passing an act for settling
 “ the extent of the English laws. 2^{dly}, That the
 “ Courts establish rules for the regulation of their
 “ practice.”

From hence it appears that something is wanting to fix determinately the judicial powers. This has been in a great measure effected by the State of *Virginia*. I shall therefore observe upon the laws of this State, in the first instance. All law proceedings are here simplified as much as possible. Special pleadings and demurrers are very seldom adopted, and never upon mere formalities. In all cases (without a motion to the Court) the general issue is pleaded, and the special matter given in evidence with notice. The merits of the cause are not suffered to depend on the niceties of clerkship. No writ abates for a circumstantial error; the case is set forth in the declaration as briefly as possible. If the action be a matter of account, the account is annexed, and copies of both left with the defendant; which being done, defendant must plead the same term, and the issue is then tried. Virginia.

The laws respecting British debts in the State of Virginia, (certainly the richest and most commercial

mercial State in the Union), will give the reader a good general idea of those made (for the same purpose) in other States, first premising a few general observations.

General Observations as to the recovery of British debts.

Property is best secured, and more easily attainable in the State of *New York* than in any other. In this State, the profession of the law, and the practice of it, resembles that of Westminster-hall as nearly as possible; so much so, that a good practitioner in the one place would by no means be incompetent in the other. In *Georgia* and *North Carolina*, British debts are recovered with infinite difficulty. Such actions are discountenanced by the Bench, and though not denied by the laws, are the same in effect by the delays and other impediments thrown in the way of them. Where the demand is prior to the Treaty of Peace, the Judges assume a discretionary power, and it therefore generally falls to the ground, while later claims are so much impeded and procrastinated, that they are seldom recovered till the end of two or three years, and then the debtor finds a way of making over his effects, and goes into goal for a few days, from whence he is at once liberated and exonerated.

It is somewhat better in *South Carolina*, though in this State the creditor is fettered with an Installment Bill and a Tender Act. It is the same in *Maryland*.

Maryland *. In the States of *Delaware*, *Pensyl-*
vania,

* The Maryland Installment Bill, passed in 1787, directs the mode of payment as follows :

That all debts contracted before the 1st day of September 1786, shall be installed, except those debts comprehended in the Treaty of Peace between the United States and his Britannic Majesty.

That the proposed installments shall not exceed the term of five years.

That no installment be made of any debt under L. 20 current money; but the Court may grant a stay of execution for any sum less than L. 20, not exceeding twelve months.

All sums above L. 20, and under L. 80, to be installed for two years.

All sums above L. 80, and under L. 160, for three years.

All sums above L. 160, and under L. 500, for four years.

All sums above L. 500, for five years.

The interest of the whole debt to be paid at each installment.

The debtor shall, within three months, give notice to his creditor, or his agent, that he intends to install his debt, and appoint a time and place for that purpose.

That the debtor shall, on installment, give good and sufficient security for the debt, and on the creditor's refusing the security, the sufficiency of such security is to be determined by two Magistrates where the debtor resides.

That the creditor, on a bond given by the debtor for the payment under installment, may file the same with the clerk of the county, and on non-payment, the plaintiff, on filing an affidavit, may issue execution for the installment due and interest; and if, on return of such execution, the debtor can prove a payment, the creditor to pay all costs of such execution.

That there shall lie no appeal, or writ of error, to remove any debt installed agreeable to this act, nor any superseas allowed.

The British creditors, comprehended under the Treaty of Peace, on consenting to the installment, shall have the same benefit under the law as other creditors.

vania, and *New Jersey*, the debtor staying in goal twenty days, and delivering up his effects, is fully discharged ; which opens a door to the fraudulent debtor, often to the ruin of the unfortunate creditor. It is not quite so bad in the more northern States ; but even there, if the man who goes to law for a British debt has the good luck to get over the frowns of the Bench, and the unpopularity which is sure to be stamped upon his character, he may be considered fortunate in obtaining judgment at the end of three years.

Aliens. In *Virginia*, no alien can hold lands, nor alien enemy maintain an action for money, or other personality. The lands of aliens are forfeitures to the State, and to an action brought by an alien, defendant may plead, " That he is an alien enemy," which extinguishes his right in the hands of the debtor.

Acts passed
in *Virginia*.

Several acts were passed in this State during the war to sequester British lands, slaves, &c. in the hands of commissioners, with directions for payment of the proceeds into the treasury. The money so paid was declared the property of the British subject, and if used by the State was to be repaid. Depreciation began at this time, and large sums of money were paid in by debtors.

The

The Assembly afterwards ordered all British property to be sold, and the proceeds of the sale to be converted into their then worth in tobacco, subject to the future direction of the Legislature; which has left the question of retribution extremely problematical. In 1780, another act took away this permission to pay into the public treasury debts due to British subjects.

If a controversy arises between two foreigners of a nation in alliance with the United States, it is decided by the consul of that nation, unless both parties chuse to refer it to the ordinary Courts of Justice. If one of the parties only be a foreigner, it is triable before the Courts of Justice of the country. If it has been instituted in a county Court, such foreigner may remove it into the General Court, or Court of Chancery, who must determine it in preference to any other cause before them. Foreigners.

In cases of life and death, foreigners have a right to the *Medietas Linguae*.

Public accounts are settled by a Board of Auditors, appointed by the General Assembly, from whose determination an appeal lies to the General Court.

Public
Accounts.

Bills

Bills of Exchange.

Bills protested, carry in Virginia 10 *per cent.* interest from their date, in some States 15 *.

Justices, Inferior Courts, Process, &c.

Every State is divided into counties. In every county Justices of the Peace are appointed, nominated by their fellows, but commissioned by the Governor; and in some States they are paid (as in Maryland); in others they act without reward. They sit in the Inferior Courts, (which resemble our Sessions,) and have jurisdiction, both civil and criminal. If the question be of fact, or of fact and law, it is referred to a Jury, who are competent to decide on both, though they generally (when a point of law arises) refer it to the Judges of the Superior Courts. The Judges execute their process by the Sheriff, the Coroner, or the Constable. Writs are issued by the Clerks of the several Courts, returnable from Court to Court, and are by him signed and directed to one or other of

* The Chamber of Commerce in New York, have adopted the following regulations with respect to bills of exchange.

A bill on any West India island, Newfoundland, or other foreign possession in America, protested for non-payment, shall be discharged with 10 *per cent.* damages, at the current exchange, when presented to the drawer or indorser. Bills on Europe, presented for non-payment, shall be discharged with 20 *per cent.* at the current exchange, and all bills drawn in Sterling money, by procurators in Europe on procurators in New York, shall be paid at the exchange current when the bill is due.

of the Officers above-mentioned, but usually to the Sheriff.

If a person commits a crime under the degree of felony, he is bound over by a Magistrate to answer it, on indictment, and sometimes on information, at the next ensuing Court. A Court of Justice (entitled a Court of Inquiry) is then called, who may try the prisoner, by Act of Assembly, at any time not less than five days, nor more than ten. If they judge him not guilty, he is acquitted; if guilty, they commit him to the goal of the General Court, before which he is to be tried, first by a Grand Jury of twenty-four, (of whom thirteen must concur in opinion,) and if they find him guilty, he is then tried by a Jury of twelve men of the vicinage where the offence was supposed to have been committed, and by their verdict (which must be unanimous) he is acquitted or condemned without appeal. The Governor has the power of pardoning all offences, but high treason, which can only be done by the House of Assembly.

Trial of Criminals.

Justices of the Peace have jurisdiction in all civil matters, except such as relate to the Courts of Admiralty.

Justices.

B

The

County
Courts.

The county Court must consist at least of four Justices, who assemble at the Court-house of the county, on a fixed day in every month, and an appeal lies from their determination to the Superior Courts, if the plaintiff's demand be to the amount of L. 10 Sterling, or affects the title or boundaries of lands.

Superior
Courts.

There are four Superior Courts; the General Court, Court of Chancery, Admiralty, and Appeals. The two first retain appeals from the county Courts, and have also original jurisdiction where the object pursued is of the value of L. 10 Sterling, or where the claim affects the title or boundaries of lands. The Admiralty jurisdiction is altogether original.

General
Court.

The General Court (the first in business and consequence in the State, and very analogous in its formation to that of all other Superior Courts in the United States,) has five Judges, the Chancery three, and the Court of Admiralty three.

Court of
Appeals.

The Court of Appeals is composed of the Judges of the three Superior Courts, who sit twice in the year, receive appeals in all civil cases from each of the Superior Courts, and is like the judicature of the Lords in England, *final*; but this Court has no original jurisdiction.

The

The Chancery and General Courts sit twice in the year, and the latter twice for business, civil and criminal, and twice for criminal business only.

Debtors unable to pay their debts, and making faithful delivery of their whole effects, having remained twenty days in prison, in the common goal, are liberated, and their persons for ever discharged of restraint for such previous debts; but all after acquired property is subject to the power of the creditor. Debtors.

The *Poor* are supported by an assessment on the titheable persons of the parish. To such as are in part only able to support themselves, supplementary aids are given. Paupers.

Marriages must be solemnized either on special licence granted by the first Magistrate of the county, on proof of consent of the parent or guardian, (if either party be under age), or after solemn publication on three several Sundays, at some place of religious worship in the parishes where the parties reside. The act of solemnization may be by the minister of any society of christians, who shall have been previously licenced for this purpose by the Court of the county. Among the Quakers, marriages are solemnized by their own societies. Marriages.

Foreigners
naturalized.

A foreigner of any nation (not in open war with them) becomes naturalized by a residence in the State, and taking an oath of fidelity; and he thereupon acquires almost every right of a native citizen.

Conveyances,
&c.

Conveyances of land must be registered in the Court of the county wherein they lie, or in the General Court, else they are void as to creditors and subsequent purchasers; and in such conveyances there must be no interlineations, and the subscribing witnesses must attend at the time of registering.

Slaves, Lands,
&c.

Slaves pass by descent, as lands do. Where the descent is from a parent, the heir is bound to pay an equal share of their value in money to each of his brothers and sisters. Slaves and lands were both formerly entailable, but by the present law of this State, (and I believe by that of most, if not all the other States,) what our books construe an estate tail is considered as an absolute estate in fee simple. The same act has removed a thousand legal difficulties, and done away many of the sober follies of the common law. They have neither fines nor recoveries, and real actions are not in use; the title to lands being tried by ejectment, trespass, or replevin.

Gaming

Gaming debts are void, and money paid in discharge of them (above 40 s.) may be recovered back at any time within three months, in an action for money had and received. Gaming.

Formerly, when an individual wished to obtain a portion of unappropriated lands, he was to locate and survey it by a public officer appointed for that purpose. Its breadth was to bear a certain proportion to its length. The grant was to be executed by the Governor, and the lands were to be improved in a certain manner, within a given time. From these regulations, there resulted to the State a sole and exclusive power of taking conveyances of the Indian right of soil. The State, or Crown, afterwards made general purchases of the Indians from time to time, and the Governor parcelled them out by special grants. Grants unaccompanied by their proper legal solemnities, were regularly set aside by *scire facias*, or by bill in Chancery. Locating
lands.

The mode is now nearly the same as before the Revolution. An individual wishing to appropriate lands, pays to the public Treasurer a proportionable sum, and then carries the Treasurer's receipt to the Auditors of Public Accounts, who thereupon debit the Treasurer with the sum, and order the Register of the Land Office to give the party a
warrant

warrant for his land. With this warrant from the Register, he goes to the Surveyor of the county where the land lies, has it laid off by the Surveyor, who gives him its exact description, in the form of a certificate, which certificate he returns to the Land Office, when the grant is immediately made out and signed by the Governor. This vests in him an absolute estate in fee simple.

Benefit of
Clergy.

The benefit or privilege of Clergy is abolished,

New Trial.

Where the verdict is against the defendant, the Court may, in their discretion, grant or deny a new trial.

Attainder.

Attainder causes neither corruption of blood, nor forfeiture of dower.

Ufury.

The laws against Ufury are in force in Virginia, but not in Pennsylvania, and some other States. They are certainly not in practice.

Many of the laws which were in force during the Monarchy being merely applicable to the Superintendant Government of Great Britain, and inculcating principles inconsistent with republicanism ; it is said to be in contemplation of Congress to form one general plan or body of laws, making

making the common law of England the basis of the work ; but whether they will reduce it to a text, or leave it to be collected from the usual monuments of it, (says Jefferson), or which would be the best and safest method, is matter both of doubt and difficulty *.

* See Jefferson's Notes on Virginia, and the Laws of the State, in two vols. folio.

C H A P.

C H A P. II.

*Of the Jurisdiction of the Courts of Westminster-hall
over those of the British Islands and Provinces ;
and of the Stile and Jurisdiction of the Courts
of the United States.*

2d Burr. Rep.
856.
The King and
Cowle.

THE Court of King's Bench can send a writ
of *Habeas Corpus* to the Plantations.

But notwithstanding this power, where they cannot judge of the cause, or give relief upon it, they would not interpose. Therefore, on imprisonment in the Plantations, Lord Mansfield said he had known complaints to the King in Council, and orders to bail or discharge ; but he did not remember any application for a writ of *Habeas Corpus*. Yet cases have formerly happened of persons illegally sent from hence and detained there, where a writ of *Habeas Corpus* out of the King's Bench in England, would be the most proper and effectual remedy.

Upon a proper case, writs of *Mandamus*, *Prohibition*, *Habeas Corpus*, and *Certiorari*, may issue to
every

every part of the dominions of the Crown of England: There is no doubt as to the power of the Court; the only question is as to the propriety.

Id. 855. 6.
7. Com. Rep.
20. Calvin's
Case, Vaugh.
R. 290. 401. 2.

The respective Acts of Assembly for establishing Courts of King's Bench and Common Pleas, in the islands of St Christopher and Nevis, reserve the jurisdiction of the Court of King's Bench in England.

Lord Mansfield said in the case of *Mostyn and Fabrigas*, "Wherever there is a question between two British Provinces in America, it must be tried in England."

The Judges of the Courts in England determine all cases that arise in the Plantations, &c. and they must inform themselves by having the law stated to them. Yet there may be some cases abroad which may not be fit to be tried here.

Id. Show. Parl.
C. 30. 33.
1. Atkyns 543.
4.
3. ——— 589.
1. Blackst. C.
107. 8.

See further upon this subject, the trial of *Mostyn and Fabrigas throughout*. Salk. Rep. 411. 666. 4. Mod. R. 222. 2. P. Williams, 75. 6. Vaughan, R. 290. 402. 2. Lord Raymond, 1447. 8. Spirit of Laws, B. 21. Ch. 17. In Shower's Parl. Cases, 30-31. in the case of Dutton and Howel, it is said, "Though a matter may justify a Governor for an act done in his government, which would not justify him for
C " the

“ the same act done in England ; yet the Gover-
 “ nor must shew that he has pursued the rules of
 “ law in that place, or in case of no positive laws,
 “ the rules of natural justice ; for either the com-
 “ mon law or new instituted laws, or natural equi-
 “ ty, must be the rule in those places.”

Lord C. J. de
 Grey in Mos-
 tyn and Fabri-
 gas, 60.

If any country, in which torture and banishment are the law, should come into the possession of Great Britain, these punishments fall of course.

Courts in the
 United States.

In the United States, the stile of the Courts of Justice, and the extent of their jurisdiction, differ considerably. In some States, they have what is called the *General Court*, invested with powers equal to those of the Court of King's Bench in England. In others, they have Courts stiled the Courts of King's Bench and Common Pleas, (exercising both civil and criminal jurisdiction,) and there are some colonies in the West Indies in which pleas of the Crown are cognizable by a Grand Sessions, and civil matters by a distinct Court, called the Common Pleas. In some of the United States, (as in the Carolinas, Virginia, Maryland, Connecticut, and New Hampshire), they have Courts in each county, which decide questions of property to a large amount ; but with an appeal to the Superior Court, which decides matters in the first instance (usually where the demand is not less than

L. 100)

L. 100) that exceed the jurisdiction of the county Courts : In others (as in Pennsylvania, New York, New Jersey, and Massachusetts), the Judges of the Superior Courts take their respective circuits thro' the States twice in the year. In some of the States there are Courts of Chancery, (as in Carolina, Virginia, New Jersey, and New York), in others not ; but the Judges are invested with powers of equitizing, similar to those of a Chancellor. From the decisions of the Chancery, the usual appeal is to the Governor and Council.

From the decisions of this Court, in the British Provinces and the West Indies, an appeal lies to the King in Council in England, to whom the proceedings must be transmitted, and the party appealing must proceed within a year after the appeal is allowed.

Appeal.

2d Lord
Raym. 1447.

But a cause cannot be transmitted from difficulty, but must be determined one way or other.

A writ of error lies to reverse a judgment in any dominion belonging to England.

Id. 1448.

Vaugh. R. 290.
402.
Show. Parl.
Cases, 33.

The Common Law is established in the provinces of Nova Scotia and New Brunswick ; and by the 14th George III. c. 38. the Criminal Law of England (in Canada also,) though matters of property

Nova Scotia,
New Brunswick,
& Canada.

perty and all civil rights are (in the latter province) determined by the laws of France *.

in Canada.

In Canada they have no House of Representatives, but the above-mentioned act empowers the Governor and Legislative Council to make laws (entitled Ordinances), but they cannot impose taxes, that power resting with the British Parliament.

Of Nova Scotia and New Brunswick.

The form of government in Nova Scotia is copied from that of England. The Governor (who is appointed in England) represents the Sovereign, whose assent is necessary to constitute a law. He nominates a Council, analogous to our House of Lords, and the Representatives of the People are chosen from the Freeholders and Burgeses of the counties, like the Commons of England.

The Governor's power formerly extended not only over the Peninsula, but also to the Island of Cape Breton, and to that tract of country which reaches from the Bay of Fundy to the south shore of the river St Laurence. Great Britain, wisely considering

* It is expected the common law of England will shortly be introduced in Canada the same as in the other provinces, in lieu of that vague, indeterminate, capricious, tyrannical, and execrable system of jurisprudence that at present prevails there.

considering the inconveniency resulting from the distance of the Courts of Law, and Houses of Legislation, has since divided this Province into two distinct Governments, and given to the latter (now denominated New Brunswick) the same constitution and laws.

The mode of practice in the Courts of both these Provinces are, as near as possible, similar to those of Westminster-hall.

The Common Law of England seems to have been adopted by general consent throughout the whole United States, under the modification of the Municipal Law, distinct and peculiar to each, except where a difference of condition and local circumstances have made them unnecessary and inapplicable. The adoption of the *Statute Law* is generally throughout the states extended to the reign of King James, and all acts previous to that period; *but not to subsequent statutes*, (unless particularly named or recognized by the Legislature of the country,) whose acts and ordinances, during the monarchy, are digested into codes, which, with the Municipal Law, forms the present system of jurisprudence throughout the United States.

C H A P.

C H A P. III.

Of the Commercial Regulations to which the United States were subjected before the Revolution, with such Alterations as have since taken place.

IT is a fundamental law of Europe, that all commerce with a foreign colony shall be regarded as a mere monopoly, punishable by the laws of the country; and in this case we are not to be directed by the laws and precedents of the antients which are not applicable. It is likewise established, that a commerce established between the mother countries does not include a permission to trade in the colonies, for these always continue in a state of prohibition.

Spirit of Laws
B. 21. c. 17.

Ibid.

The disadvantage of a colony that loses the liberty of commerce is compensated by the protection of the mother country.

When a foreign commerce with a colony is prohibited, it is not lawful to trade in its seas. Nations (who are, with respect to the universe, what individuals are in a state,) like these are governed by the law of nature, and by particular laws

laws of their own making. One nation may resign to another the sea as well as the land.

By 4th Geo. III. c. 15. § 33. 4. Foreign vessels found at anchor, or hovering within two leagues of the shore of any British American dominion, and not departing (unless distressed) *in forty-eight hours after notice*, were liable to be forfeited, together with the goods, except French vessels fishing on the coast of Newfoundland between the limits permitted by treaty *.

4th Geo. III.
c. 15. § 33-4.
See also § 35.

The statute 15th Car. II. c. 7. enacts, That no commodity of the growth, production, or manufacture of Europe shall be imported into any land, island, plantation, colony, territory, or place to his Majesty belonging, but what shall be shipped in England, Wales, or Berwick, and in English built shipping; whereof the master and three-fourths of the manning (at least) to be English, under the forfeiture of ship and cargo.

15th Car. II.
c. 7.

By 7th c. 8. W. III. c. 22. l. 2. No goods or merchandise shall be imported into, or exported out

7. & 8. Will.
III. c. 22. § 2.

* See Blackstone's Commentaries, 418. and the statute of 21st Geo. III. c. 11. which allows British merchant vessels to be navigated by three-fourths foreign seamen.

13th Geo. III.
c. 26.

out of, any colony or plantation, but in ships built in England, Ireland, or the colonies, (except prize ships legally condemned, 20th Geo. II. c. 45. § 9.) and wholly owned by the people thereof, or any of them, under forfeiture of ship and goods. But, by the 13th Geo. III. c. 26. a foreigner may purchase a share in a British ship, with the consent in writing of the owners, of three-fourth parts in value, at least indorsed on the certificate of the register before two witnesses, otherwise the contract to be void.

15th Geo. II.
c. 31. § 1.

By 15th Geo. II. c. 31. § 1. " No ship or vessel
" required (by 7th c. 8. W. III. c. 22. and 5th
" Ann. c. 8.) to be registered, and carrying goods,
" &c. to or from any of his Majesty's plantations in
" America, or to or from one plantation to ano-
" ther, shall be permitted to trade, or be deemed
" qualified for that purpose, within the intent of
" the said acts, until the master or person having
" charge of the said ship or vessel, shall upon oath
" (or in case of a Quaker, upon affirmation) be-
" fore the Governor or Collector of the Customs,
" where the same shall arise, give a just and true
" account of the name and burth n thereof, and
" of the place from whence she came, and of the
" other particulars, according to the form of the
" oath set forth in the act, under the forfeiture
" in the said act mentioned." But,

By

By 3d and 4th Ann. c. 8. 13th Geo. I. c. 5. 3d 4th Ann. c. 8.
 Geo. II. c. 12. 4th Geo. III. c. 15. and 19. 9th 13th Geo. I.
 Geo. III. c. 28. "Horses, victuals, and linen cloth c. 5. &c.
 "from Ireland; salt from any part of Europe;
 "wines of the growth of Madeira, and of any of
 "the Western Islands; and goods necessary for the
 "fishery from Jersey or Guernsey, may be im-
 "ported directly into the British Colonies in
 "America." And,

By the Act of Union, (5th Ann, c. 8. article 4.) 5th Ann. c. 8.
 "All the subjects of the united kingdoms of Great
 "Britain, shall have full freedom and intercourse
 "of trade and navigation to and from any part or
 "place within the said united kingdom, and the
 "dominions and plantations thereunto belong-
 "ing." Also,

By the 20th Geo. III. c. 10. "Any goods which 20th Geo. III.
 "may be imported from British America, &c. c. 10.
 "to Great Britain, may be imported directly to
 "Ireland, and exported from thence, if the Irish
 "Parliament imposes the same duties as are paid
 "in Great Britain."

*Some American produce was permitted to be car-
 ried directly to a foreign market, without being first
 brought to Great Britain.*

D

For,

For, " Any vessel built in Great Britain, and
 " navigated according to law, and belonging to
 " any of his Majesty's subjects of which the major
 " part shall be residing in Great Britain, and the
 " residue in Great Britain, or in some of his
 " Majesty's Sugar Colonies in America, may load
 " sugars of the growth of the said Colonies, or
 " any of them, and carry the same from thence
 " to any part of Europe, under certain restrictions
 " and regulations." See the 12th Geo. II. c. 30.
 extended to all ships belonging to Great Britain
 by 15th Geo. II. c. 33. § 5. The act of the 12th
 Geo. II. c. 30. was continued down from time to
 time, and by 18th Geo. III. c. 45. § 3. is conti-
 nued to September 1785, &c.

12th Geo. II.
c. 30.

15th Geo. II.
c. 33. § 5.

18th Geo. III.
c. 45. § 3.

3d Geo. II. c.
28. &c.

And before the Revolution, " Any vessel be-
 " longing to his Majesty's subjects residing in
 " Great Britain, and navigated according to law,
 " might load rice in North Carolina, South Ca-
 " rolina, Georgia, East and West Florida, and
 " carry the same directly to any part of Europe,
 " southward of Cape Finisterre, without carrying
 " the same to any other Plantation, or to Great
 " Britain, under certain regulations." See 3d
 Geo. II. c. 28. 8th Geo. II. c. 19. 5th Geo. III.
 c. 45. § 19. 10th Geo. III. c. 31. 11th Geo. III.
 c. 39.

All

All the produce of the British American Plantations, was divided into enumerated and non-enumerated articles. The enumerated articles were those particularly named in 12th Car. II. c. 18. § 18. 19. 15th Car. II. c. 7. § 9. 22d and 23d Car. II. c. 26. § 10, 11, 12, 13. 7th and 8th W. III. c. 22. 3d and 4th Ann, c. 5. §. 12. 3d and 4th Ann, c. 10. 8th Geo. I. c. 15. § 24. 8th Geo. I. c. 18. § 22. which enumerated articles are sugar, cotton, wool, tobacco, indigo, ginger, dying woods, rice, molasses, furs, and copper ore of the Plantations; tar, pitch, turpentine, masts, yards, bowsprits, coffee, pimento, cocoa-nuts, whale fins, raw silk, hides and skins, pot and pearl ashes of America; and all those articles before the Union must have been brought to England only; after the 5th Ann, c. 8. art. 4. to Great Britain only; and since the 20th Geo. III. c. 10. they must be brought to Great Britain or Ireland, except that sugars may be carried directly to any foreign port, under the restrictions of 12th Geo. II. c. 30. ; and that, before the Civil War, rice might have been carried to the southward of Cape Finisterre, under the acts 3d Geo. II. c. 28. &c.

The non-enumerated articles are those which the several acts regarding the Colonies do not specify.

By

By 4th Geo. III. c. 15. § 28. 5th Geo. III. c. 45. § 22. 6th Geo. III. c. 52. § 30. 7th Geo. III. c. 2. 9th Geo. III. c. 18. § 3. The non-enumerated articles might be carried to any part of Europe to the southward of Cape Finisterre, to any of the British Colonies in America, to any port of Spain within the Bay of Biscay, to Ireland, and to Jersey or Guernsey (except rum to those two last mentioned islands) as well as to Great Britain.

Such lumber as is specified in 8th Geo. I. c. 12, § 2. might be carried to any of the British Colonies in America, to any place in America, Africa, or Asia, to Ireland, the Madeiras, the Azores, and to any part of Europe to the southward of Cape Finisterre; and iron might be carried to any British Colony in America; to any place in America, Africa, or Asia; and to Ireland, as well as to Great Britain, to which place only all the above articles must have been formerly imported. But since the Union of England and Scotland, and the making the 20th Geo. III. c. 10. with respect to Ireland, the Scotch and Irish are entitled to the same free trade and navigation to and from British America, as the English have.

6th Geo. III.
c. 49. § 1.

Several free ports were also opened in two British islands in the West Indies; for by 6th Geo. III.

c,

c. 49. § 1. " Live cattle, and all manner of goods
 " and commodities, the growth or produce of any
 " Colony or Plantation in America, not under the
 " dominion of his Majesty, his heirs and succes-
 " sors, except tobacco, might be imported into
 " Prince Rupert's Bay, and Roseau in the island
 " of Dominica, from any foreign Colony or Plan-
 " tation in America, in any foreign sloop, schooner,
 " or other vessel whatsoever, not having more
 " than one deck," (expired as to Dominica).—
 And by sect. 2. " Live cattle, and all manner of
 " goods and commodities, the growth or produce
 " of any Colony or Plantation in America, not
 " under the dominion of his Majesty, his heirs and
 " successors, except sugars, coffee, pimento, gin-
 " ger, molasses, and tobacco, may, in like man-
 " ner, be imported into Kingston, Savanna la Mar,
 " Montego Bay, and Saint Lucea, in the island of
 " Jamaica, from any foreign Colony or Plantation
 " in America, in any foreign sloop, schooner, or
 " other vessel whatsoever, not having more than
 " one deck."

This Act was continued and amended by the
 13th George III. c. 73. But by 14th George III. c.
 41. and 21st George III. c. 29. it is continued, as
 to Jamaica only, until November 1787, &c.

13th Geo. III.
 C. 73.
 14th Geo. III.
 C. 41.
 21st Geo. III.
 C. 29.

By

23d Geo. III.
c. 26.

By 23d Geo. III. c. 26. so much of the 16th Geo.
“ III. c. 5. (as prohibits all trade and intercourse
“ with the Thirteen Colonies, in the act named
“ during the continuance of the rebellion within
“ the said Colonies respectively, &c.) and also so
“ much of the 17th Geo. III. c. 7. (as enables the
“ Commissioners for executing the office of Lord
“ High Admiral of Great Britain, to grant com-
“ missions to the commanders of private ships of
“ war and vessels employed in trade, or retained in
“ his Majesty’s service, to take, and make prize of
“ all such ships and vessels, and their cargoes, as
“ are therein mentioned, for a limited time) so far
“ as such Acts extend to prohibit trade and inter-
“ course with the territories now composing the
“ United States of America, or to authorize any
“ hostilities against the persons or properties of the
“ subjects and citizens of the said United States,
“ after the respective periods set forth in his Ma-
“ jesty’s Proclamation, for the cessation of hostili-
“ ties between Great Britain and the United States
“ of America, bearing date the 14th day of
“ February 1783, are repealed.”

Ibid, c. 39.

By the 23d Geo. III. c. 39. “ No manifest, certi-
“ ficate, or other document, is required for any ship
“ or vessel belonging to the United States of Ame-
“ rica, arriving from thence, at, or clear g out
“ from, any port in this kingdom, for any place
“ within

“ within the said United States, excepting such
 “ bonds as are required, duly to export, and not
 “ to reland any goods entitled to a drawback or
 “ bounty, or which are prohibited to be used or
 “ worn in this kingdom.—Which bond may be
 “ discharged upon a certificate under the hands
 “ and seals of any officers appointed by the United
 “ States for that purpose; and where no such of-
 “ ficer is appointed, then the bond may be dis-
 “ charged upon a certificate under the hand and
 “ seal of any Magistrate of the said United States,
 “ certifying that there is no such officer at such
 “ place; and that oath hath been made before
 “ such Magistrate, by the master, or other person
 “ having the charge of such ship, that the goods
 “ for which such certificate is required, were duly
 “ landed by him within the said United States.

“ And his Majesty in Council may, by orders
 “ published from time to time, give such direc-
 “ tions, and make such regulations, with respect
 “ to duties, drawbacks, or otherwise, for carrying
 “ the trade between the territories of Great Britain
 “ and those of the United States, as to his Majes-
 “ ty in Council shall appear most expedient and
 “ salutary.”

*The act, and the powers and authorities thereby
 given to his Majesty, and all orders published in
 consequence*

consequence thereof, were in force until the 20th December 1783, and no longer.

Orders of the King in Council relative to the Trade between the Subjects of his Majesty's Dominions and the Inhabitants of the United States of America, made in pursuance of the powers given to his Majesty by 23d George III.

At the Court of St James's, the 14th May 1783.

P R E S E N T,

The KING's Most Excellent Majesty.

WHEREAS, by an Act of Parliament passed this Session, entitled, " An Act for preventing certain instruments from being required from ships belonging to the United States of America, and to give to his Majesty, for a limited time, certain powers for the better carrying on trade and commerce between the subjects of his Majesty's dominions, and the inhabitants of the said United States," it is (inter alia) enacted, That during the continuance of

of the said Act, it shall and may be lawful for his Majesty in Council, by order or orders to be issued and published from time to time, to give such directions, and to make such regulations with respect to duties, drawbacks, or otherwise, for carrying on the trade and commerce between the people and territories belonging to the Crown of Great Britain and people and territories of the said United States, as to his Majesty in Council shall appear most expedient and salutary ; any law, usage, or custom to the contrary notwithstanding. His Majesty doth therefore, by and with the advice of his Privy Council, hereby order and direct, That any oil, or any unmanufactured goods or merchandises, being the growth or production of any of the territories of the said United States of America, may (until further order) be imported directly from thence into any of the ports of this kingdom, either in British or American ships by British subjects, or by any of the people inhabiting in and belonging to the said United States, or any of them ; and such goods or merchandise shall and may be entered and landed in any port in this kingdom, upon payment of the same duties as the like sort of goods or merchandise are, or may be subject and liable to, if imported by British subjects in British ships from any British Island or Plantation in America, and no other ; notwithstanding such goods or merchandise, or the ships in which the same may be brought, may be accompanied with the certificates or other documents heretofore required

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by

by law. And it is hereby further ordered and directed, That there shall be the same drawbacks, exemptions, and bounties on merchandises and goods exported from Great Britain into the territories of the said United States of America, or any of them, as are allowed upon the exportation of the like goods and merchandise to any of the Islands, Plantations, or Colonies belonging to the Crown of Great Britain in America. And it is hereby further ordered and directed, That all American ships and vessels which shall have voluntarily come into any port of Great Britain since the 20th of January 1783, shall be admitted to an entry; and, after such entry made, shall be entitled, together with the goods and merchandises on board the same ships and vessels, to the full benefit of this order. And the Right Honourable the Lords Commissioners of his Majesty's Treasury, and the Lords Commissioners of the Admiralty, are to give the necessary directions herein, as to them may respectively appertain.

W. FAWKENER.

At

At the Court at St James's, the 6th of June 1783.

P R E S E N T,

The KING's most Excellent Majesty in Council.

WHEREAS, by an Act of Parliament passed this Session, entitled, " An Act for preventing certain " instruments from being required from ships belonging to the United States of America, and to give " to his Majesty, for a limited time, certain powers " for the better carrying on trade and commerce " between the subjects of his Majesty's dominions, " and the inhabitants of the said United States," it is amongst other things enacted, That during the continuance of the said Act, it shall and may be lawful for his Majesty in Council, by order or orders to be issued and published from time to time, to give such regulations with respect to duties, drawbacks, or otherwise, for carrying on the trade and commerce between the people and territories belonging to the Crown of Great Britain, and the people and territories of the said United States, as to his Majesty in Council shall appear most expedient and salutary ; any law, usage, or custom to the contrary notwithstanding: His Majesty doth therefore, by and with the advice of his Privy Council, hereby order and direct, That pitch, tar, turpentine, indigo, masts, yards, and bowsprits, being the growth or production of any of the United States
of

of America, may (until further order) be imported directly from thence into any of the ports of this Kingdom, either in British or American ships, by British subjects, or by any of the people inhabiting in and belonging to the said United States, or any of them; and that the Articles above recited shall and may be entered and landed in any port of this Kingdom, upon payment of the same duties as the same are or may be subject and liable to, if imported by British subjects in British ships, from any British Island or Plantation in America, and no other, notwithstanding such pitch, tar, turpentine, indigo, masts, yards, and bowsprits, or the ships in which the same may be brought, may not be accompanied with the certificates or other documents heretofore required by law: And his Majesty is hereby further pleased, by and with the advice aforesaid, to order and direct, That any tobacco, being the growth or production of any of the territories of the said United States of America, may likewise (until further order) be imported directly from thence, in manner above-mentioned, and may be landed in this Kingdom; and upon the importer's paying down in ready money the duty commonly called the Old Subsidy, such tobacco may be ware-housed under his Majesty's locks, upon the importer's own bond for payment of all the further duties due for such tobacco, within the time limited by law, according to the net weight and quantity of such tobacco at the time it shall be so landed, with the same allowances for the payment of such further duties,

ties, and under the like restrictions and regulations in all other respects, not altered by this order, as such tobacco is and may be ware-housed, by virtue of any Act or Acts of Parliament in force.—And the Right Honourable the Lords Commissioners of his Majesty's Treasury, and the Lords Commissioners of the Admiralty, are to give the necessary directions herein, as to them may respectively appertain.

STEPH. COTTRELL.

At the Court at St James's, the 2d of July 1783.

P R E S E N T,

The KING's Most Excellent Majesty in Council.

WHEREAS, by an Act of Parliament passed this Session, entitled, " An Act for preventing certain instruments from being required from ships belonging to the United States of America, and to give to his Majesty, for a limited time, certain powers for the better carrying on trade and commerce between the subjects of his Majesty's dominions, and the inhabitants of the said United States," it is amongst other things enacted, That during the continuance

tinuance of the said Act, it shall and may be lawful for his Majesty in Council, by order or orders to be issued and published from time to time, to give such directions, and to make such regulations with respect to duties, drawbacks, or otherwise, for carrying on the trade and commerce between the people and territories belonging to the Crown of Great Britain, and the people and territories of the said United States, as to his Majesty in Council shall appear most expedient and salutary; any law, usage, or custom to the contrary notwithstanding: His Majesty doth therefore, with the advice of his Privy Council, hereby order and direct, That pitch, tar, turpentine, hemp, flax, masts, yards, bowsprits, staves, heading, boards, timber, shingles, and all other species of lumber, horses, neat cattle, sheep, hogs, poultry, and all other species of live stock, and live provisions, peas, beans, potatoes, wheat, flour, bread, biscuit, rice, oats, barley, and all other species of grain, being the growth or production of the United States of America, may (until further order) be imported by British subjects, and navigated according to law, from any port of the United States of America to any of his Majesty's West India Islands; and that rum, sugar, molasses, coffee, cocoa nuts, ginger, and pimento, may (until further order) be exported by British subjects in British built ships, owned by his Majesty's subjects, and navigated according to law, from any of his Majesty's West India Islands to any
port

port or place within the said United States, upon payment of the same duties on exportation, and subject to the like rules, regulations, securities, and restrictions, as the same articles by law are or may be subject and liable to, if exported to any British Colony or Plantation in America.—And the Right Honourable the Lords Commissioners of his Majesty's Treasury, and the Lords Commissioners of the Admiralty, are to give the necessary directions herein, as to them may respectively appertain.

STEPH. COTTRELL.

Under this title, the Editor begs leave to refer the Reader to a late publication, entitled, “ The Laws of New-York, in force against the Loyalists, and affecting the trade of Great Britain;” at the same time observing, that the United States having respectively complied with the requisition of Congress in the subjoined Letter, many of those laws that militated against the claims of the creditor are now repealed; in consequence of which, matters of account are now become more open to investigation, and the payment of debts consequently more easily attainable.

The

The following Circular Letter has been transmitted by the United States in Congress assembled, to the Governors of the respective States.

S I R,

OUR secretary for foreign affairs has transmitted to you copies of a letter to him from our Minister at the Court of London, of the 4th day of March 1786, and of the papers mentioned to have been inclosed in it.

We have deliberately and dispassionately examined and considered the several facts and matters urged by Britain as infractions of the Treaty of Peace on the part of America, and we regret that in some of the States too little attention appears to have been paid to the public faith pledged by that Treaty.

Not only the obvious dictates of religion, morality and national honour, but also the first principles of good policy, demand a candid and punctual compliance with engagements constitutionally and fairly made.

Our national constitution having committed to us the management of the national concerns with foreign states and powers, it is our duty to take care, that all the rights which they ought to enjoy within

within our jurisdiction, by the laws of nations and the faith of treaties, remain inviolate. And it is also our duty to provide, that the essential interests and peace of the whole confederacy be not impaired or endangered by deviations from the line of public faith, into which any of its members may, from whatever cause, be unadvisedly drawn.

Let it be remembered, that the thirteen independent sovereign states have, by express delegation of power, formed and vested in us a general, though limited, sovereignty, for the general and national purposes specified in the confederation. In this sovereignty they cannot severally participate (except by their delegates), nor with it have concurrent jurisdiction; for the ninth article of the confederation most expressly conveys to us the sole and *exclusive* right and power of determining on *war* and *peace*, and of entering into *treaties* and alliances, &c.

When, therefore, a treaty is constitutionally made, ratified and published by us, it immediately becomes binding on the whole nation, and super-added to the laws of the land, without intervention or fiat of State Legislatures. Treaties derive their obligations from being compacts between the sovereign of this, and the sovereign of another nation; whereas laws or statutes derive their force

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from

from being acts of a legislature competent to the passing of them.

Hence it is clear, that treaties must be implicitly received and observed by every member of the nation ; for as State Legislatures are not competent to the making of such compacts or treaties, so neither are they competent in that capacity, authoritatively to decide on, or ascertain the construction and sense of them. When doubts arise respecting the construction of state laws, it is not unusual nor improper for the State Legislatures, by explanatory or declaratory acts, to remove those doubts : but the case between laws and compacts or treaties, is in this widely different ; for when doubts arise respecting the sense and meaning of a treaty, they are so far from being cognizable by a State Legislature, that the United States in Congress assembled have no authority to settle and determine them. For as the Legislature only, which constitutionally passes a law, has power to revise and amend it ; so the sovereigns only, who are parties to the treaties, have power, by mutual consent and posterior articles, to correct or explain it.

In cases between individuals, all doubts respecting the meaning of a treaty, like all doubts respecting the meaning of a law, are in the first instance mere judicial questions, and are to be heard
and

and decided in the Courts of Justice, having cognizance of the causes in which they arise, and whose duty it is to determine them according to the rules and maxims established by the laws of nations for the interpretation of treaties. From these principles it follows of necessary consequence, that no individual state has a right by legislative acts to decide and point out the sense in which their particular citizens and courts shall understand this or that article of a treaty.

It is evident, that a contrary doctrine would not only militate against the common and established maxims and the ideas relative to this subject, but would prove no less ludicrous in practice than it is irrational in theory ; for in that case the same article of the same treaty might by law be made to mean one thing in New-Hampshire, another thing in New-York, and neither the one nor the other of them in Georgia.

How far such Legislative acts would be valid and obligatory, even within the limits of the state passing them, is a question which we hope never to have occasion to discuss. Certain, however, it is, that such acts cannot bind either of the contracting sovereigns, and consequently cannot be obligatory on their respective nations.

But

But if treaties, and every article in them, be (as they are and ought to be) binding on the whole nation; if individual states have no right to accept some articles and reject others; and if the impropriety of state acts to interpret and decide the sense and construction of them be apparent; still more manifest must be the impropriety of state acts to controul, delay, or modify the operation and execution of these national compacts.

When it is considered, that the several States assembled by their delegates in Congress, have express power to form treaties, surely the treaties so formed are not afterwards to be subject to such alterations as this or that Legislature may think expedient to make, and that too without the consent of either of the parties to it; that is, in the present case, without the consent of all the United States, who collectively are parties to this treaty on the one side, and his Britannic Majesty on the other. Were the Legislatures to possess and exercise such power, we should soon be involved as a nation, in anarchy and confusion at home, and in disputes which would probably terminate in hostilities and war with the nations with whom we have formed treaties. Instances would then be frequent of treaties fully executed in one state, and only partly executed in another; and of the same article being executed in one manner in one state, and

and in a different manner, or not at all, in another state. History furnishes no precedent of such liberties taken with treaties under form of a law in any nation.

Contracts between nations, like contracts between individuals, should be faithfully executed, even though the sword in the one case, and the law in the other, did not compel it. Honest nations, like honest men, require no constraint to do justice ; and though impunity and the necessity of affairs may sometimes afford temptations to pare down contracts to the measure of convenience, yet it is never done but at the expence of that esteem, and confidence and credit which are of infinitely more worth than all the momentary advantages which such expedients can extort.

But although contracting nations cannot, like individuals, avail themselves of Courts of Justice to compel performance of contracts, yet an appeal to Heaven and to arms is always in their power, and often in their inclination.

But it is their duty to take care, that they never lead their people to make and support such appeals, unless the sincerity and propriety of their conduct affords them good reasons to rely with confidence

confidence on the justness and protection of Heaven.

Thus much we think it useful to observe, in order to explain the principles on which we have unanimously come to the following resolutions, viz.

Resolved, " That the Legislatures of the several
 " States cannot of right pass any acts for interpreting, explaining or construing a national
 " treaty, or any part or clause of it, nor for restraining, limiting, or in any manner impeding,
 " retarding, or counteracting the operation and
 " execution of the same; for that, on being constitutionally made, ratified, and published, they
 " become, in virtue of the confederation, part of
 " the law of the land, and are not only independent of the will and power of such Legislatures,
 " but also binding and obligatory on them."

As the treaty of peace, so far as it respects the matter and things provided for in it, is a law to the United States which cannot by all or any of them be altered or changed, all State acts, establishing provisions relative to the same objects which are incompatible with it, must in every point of view be improper; such acts do nevertheless exist; but we do not think it necessary either to enumerate

rate them particularly, or to make them severally the subjects of discussion. It appears to us sufficient to observe and insist, that the treaty ought to have free course in its operation and execution, and that all obstacles interposed by State acts be removed. We mean to act with the most scrupulous regard to justice and candour towards Great Britain, and with an equal degree of delicacy, moderation, and decision towards the States who have given occasion to these discussions.

For these reasons we have in general terms
 “ Resolved, That all such acts, or parts of acts, as
 “ may be now existing in any of the states, repug-
 “ nant to the Treaty of Peace, ought to be forth-
 “ with repealed; as well to prevent their continu-
 “ ing to be regarded as violations of that Treaty,
 “ as to avoid the disagreeable necessity there might
 “ otherwise be of raising and discussing questions
 “ touching their validity and obligation.”

Although this resolution applies strictly only to such of the states as have passed the exceptionable acts alluded to; yet, to obviate all future disputes and questions, as well as to remove those which now exist, we think it best that every State, without exception, should pass a law on the subject. We have therefore “ Resolved, That it be recom-
 “ mended

“ mended to the several States to make such re-
 “ peal rather by describing or reciting the said
 “ acts ; and for that purpose to pass an act, de-
 “ claring in general terms that all such acts, and
 “ parts of acts, repugnant to the Treaty of Peace
 “ between the United States and his Britannic
 “ Majesty, or any article thereof, shall be, and
 “ hereby are repealed ; and that the Courts of
 “ Law and Equity, in all cases and questions cog-
 “ nizable by them respectively, and arising from
 “ or touching the said Treaty, shall decide and ad-
 “ judge according to the true intent and meaning
 “ of the same ; any thing in the said acts, or parts
 “ of acts, to the contrary thereof notwithstand-
 “ ing.”

Such laws would answer every purpose, and be
 easily formed. The more they were of the like
 tenor throughout the States the better. They
 might each recite,

“ Whereas certain laws or statutes made and
 “ passed in some of the United States, are regard-
 “ ed and complained of as repugnant to the Treaty
 “ of Peace with Great Britain, by reason whereof
 “ not only the good faith of the United States,
 “ pledged by that Treaty, has been drawn into
 “ question, but their essential interests under that
 “ Treaty greatly affected. And whereas justice to
 Great

“ Great Britain, as well as a regard to the honour
“ and interests of the United States, require that
“ the said Treaty be faithfully executed, and that
“ all obstacles thereto, and particularly such as do
“ or may be construed to proceed from the laws
“ of this State, be effectually removed : Therefore

“ Be it enacted by _____ and it
“ is hereby enacted by the authority of the same,
“ that such of the acts, or parts of acts, of the
“ Legislature of this State, as are repugnant to the
“ Treaty of Peace between the United States and
“ his Britannic Majesty, or any article thereof,
“ shall be, and hereby are repealed. And fur-
“ ther, that the Courts of Law and Equity with-
“ in this State, be, and they hereby are directed
“ and required, in all causes and questions cogniz-
“ able by them respectively, and arising from or
“ touching the said Treaty, to decide and adjudge
“ according to the tenor, true intent and meaning
“ of the same, any thing in the said acts, or parts
“ of acts, to the contrary thereof in any wise not-
“ withstanding.”

Such a general law would, we think, be preferable to one that should minutely enumerate the acts and clauses intended to be repealed, because omissions might accidentally be made in the enumeration, or questions might arise, and perhaps

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not

not be satisfactorily determined, respecting particular acts and clauses, about which contrary opinions may be entertained. By repealing in general terms all acts and clauses repugnant to the Treaty, the business will be turned over to its proper departments, viz. the Judicial; and the Courts of Law will find no difficulty in deciding whether any particular act or clause is or is not contrary to the Treaty. Besides, when it is considered that the Judges in general are men of character and learning, and feel as well as know the obligations of office, and the value of reputation, there is no reason to doubt that their conduct and judgment relative to these, as well as other judicial matters, will be wise and upright.

Be pleased, Sir, to lay this Letter before the Legislature of your State without delay. We flatter ourselves that they will concur with us in opinion, that candour and justice are as necessary to true policy as they are to sound morality; and that the most honourable way of delivering ourselves from the embarrassment of mistakes, is fairly to correct and amend them. It certainly is time that all doubts respecting the public faith be removed, and that all questions and differences between us and Great Britain be amicably and finally settled. The States are informed of the reasons why his Britannic Majesty still continues to occu-

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py the frontier posts, which, by the Treaty, he agreed to evacuate ; and we have the strongest assurances an exact compliance with the Treaty on our part shall be followed by a punctual performance of it on the part of Great Britain.

It is important that the several Legislatures should, as soon as possible, take these matters into consideration ; and we request the favour of you to transmit to us an authenticated copy of such acts and proceedings of the Legislature of your State, as may take place on the subject, and in pursuance of this Letter.

By order of the Congress.

(Signed)

ARTHUR ST CLAIR, *President.*

C H A P.

C H A P. IV.

Of the Revenue Laws.

THE Revenue Laws are very severe and strict in different States, and particularly so in the State of Virginia. The smallest quantity of goods found in a ship, not specified in the invoice, or manifest, will condemn both ship and cargo, and the Officers of the Customs have power to open and search all packages whatsoever. Vessels have been lately condemned in the Admiralty for the concealment of effects of so small value as L. 20; and even that concealment supposed to have been accidental and unintentional.

It is necessary for every master of a vessel, on his arrival at any of the ports in the United States, to make immediate enquiry into the rules observed at the Custom House.

The following are the rules observed at the Custom House of New-York :

All goods entered, the duty on which amounts to L. 20, may be bonded for, payable in six months,
if

if said goods are imported from any other place than the West Indies; if from the West Indies, the duty is payable in four months; and if any part of said goods are exported to any port within the United States, of so much as is exported, the duty is drawn back, provided said goods are exported within ninety days from the time of the entry of the vessel in which the goods were imported.

If the duty on goods entered does not amount to L. 20, the duty must be paid instantly, and no drawbacks allowed on such goods if exported.

CHAP.

C H A P. V.

Of the Inferior and Superior Courts of Civil and Criminal Jurisdiction, Counsel, Attornies, &c.

Inferior Courts
of Civil Juris-
diction in the
West Indies.

THERE are Inferior Courts of Civil Jurisdiction throughout all the Provinces, the West India islands, and the United States.

In *Jamaica*, (besides the Superior Court of General Jurisdiction throughout the island,) there are Courts peculiar to certain districts, which hold plea to the amount of L. 20 only.

In some of the *Windward Islands*, the Chief Justice of the Superior Court sits alone to try actions, to a certain amount, without a Jury.

In other islands, personal actions, *to a certain amount*, are brought on before all the Judges of the Court, and are decided without a Jury.

In the United
States.

In the United States, there are Inferior Courts held before Justices of the Peace, in which all matters of debt or damage are tried under 40 s. In some States these are denominated Courts of Conscience,

Conscience, and in others County Courts, and take cognizance of matters under L. 10. No appeal is allowed where the debt does not exceed that sum. The form of process is set out at length in the respective Acts of Assembly.

In *Jamaica*, the Superior Court of Common Law is called the Supreme Court, and has jurisdiction like that of the King's Bench, Common Pleas, and Exchequer. The Judges go the Circuit here thro' the island twice in the year.

Superior
Courts of
Civil Ju-
risdiction
in Jamai-
ca.

In *Barbadoes*, there is a Court of Common Pleas in each district, and distinct Judges for each.

Barbadoes.

In *Jamaica*, *St Christophers*, and *Nevis*, the Superior Court has the same jurisdiction as the King's Bench and Common Pleas.

Jamaica, St
Christophers,
&c.

In *Barbadoes*, *Antigua*, and *Montserrat*, the Criminal Court is distinct from the Common Pleas, and consists of a number of Judges. In *Antigua* there is only one Court of Common Pleas for the whole island.

Barbadoes,
Antigua, &c.

In the rest of the *Leeward Islands*, the Superior Courts of Common Law is a King's Bench and Common Pleas.

Leeward
Islands.

The

Mode of
bringing
actions.

The mode of bringing actions in the United States, and the West India islands, almost all differ ; but the following observations on their judicial proceedings will apply to most of them.

In the West India islands, the action is commenced by filing the declaration in the office, and a copy of such declaration, with a summons, is served on defendant by one of the Marshal's Bailiffs ; but if defendant is absent from the island, and has appointed an Attorney, then if the letter of attorney is registered in the Secretary or Register's Office, the declaration, &c. is served upon him, or left at his usual place of abode : If no such letter of attorney is registered in the Office, then if defendant has a plantation on the island, the declaration, &c. must be served on the overseer ; and if neither is to be met with, it must be left at the house upon such plantation : If there is no plantation (the property of defendant,) it must be nailed on the Court-house door.

Original
process, &c.

All original process, and even writs of *dedimus potestatem* to Commissioners to take renunciation of dower, are issued by the Courts of Common Law, and tested in the name of the Chief Justice. No writs are issued out of the Chancery.

No

No real actions are in use except actions in Real Actions.
 dower. The method of proceeding in the Courts
 of the United States (in criminal cases) is similar
 to that of the Superior Courts in England, except
 that in defending a prisoner, counsel are allowed
 to address the Jury upon facts and evidence, as
 well as upon points of law.

In *Jamaica* and *Barbadoes* the departments of Counsel and
Attorney.
 Counsel and Attorney are distinct: In all the other
 islands, and throughout the States, they are united.
 The same person who manages the process, and
 brings the cause into Court, advises his client, and
 pleads the cause. The mere knowledge of prac-
 tice avails nothing, nor is eminence to be here ob-
 tained by the utmost extent of legal knowledge,
 unaccompanied with the accomplishments of the
 orator. The palm is to him who has the hand-
 somest way of opening his mouth.

C H A P. VI.

Of the Court of Admiralty.*Court of
Admiralty.

THE Court of Admiralty has three sorts of jurisdiction; *1st*, It decides all maritime causes; *2^d*, It determines the legality of captures in time of war; and *3^{dly}*, It has a concurrent jurisdiction with the Courts of Record, where penalties and forfeitures are incurred by Act of Parliament (in the dominions of England), or Act of Assembly (within the United States.) It proceeds in the same manner as the Court of Admiralty in England. From the determination of this Court, in the British West Indies and Provinces, an appeal lies to the High Court of Admiralty in England, and also to the King in Council. In the United States, the appeal is to the Governor and Council.

Blackst. Com.
iii. 69.

When two powers are at war, they have a right to make prizes of the ships, goods, and effects of each

* There are very few Admiralty Precedents extant in print: A few very good ones are to be found in Stokes's Colony Constitutions, to which useful and excellent publication the reader is referred.

each other upon the high seas. Whatever is the property of the enemy, may be acquired by capture at sea; but the property of a friend cannot be taken, provided he observe a neutrality.

By the Maritime Law of Nations (universally and immemorially) received, there is an established method of determination whether the capture be or be not lawful prize.

Before the ship or goods can be disposed of by the captor, there must be a regular judicial proceeding, wherein both parties must be heard, and condemnation thereupon as a prize, in a Court of Admiralty, judging by the law of nations and treaties.

The proper and regular Court for these condemnations, is the Court of that State to whom the captor belongs.

A claim of ship or goods must be supported by the oath of somebody, at least as to *belief*.

If the sentence of the Admiralty is erroneous, there is in every maritime country a superior *Court of Review*, to which the aggrieved party may appeal. This Court is also governed by the law

Court of
Review.

law of nations, and the treaties subsisting with that neutral power whose subject is a party before them.

In Great Britain, and her provinces, the property of prizes being given in war to the captors, the King cannot arbitrarily release the capture, nor can the property of a foreign subject, taken as prize on the high seas, be affected by laws peculiar to England.

Every State has an equal right to erect Admiralty Courts for the trial of prizes taken by virtue of their respective commissions; but neither has a right to try the prizes taken by the other, or to reverse the sentences given by the other's tribunals. The only method of rectifying their errors, is by appeal to the Superior Court.

This is the clear law of nations, and by this method prizes have always been determined in every other maritime country in Europe, as well as in England.

In case of prize vessels taken in time of war, in any part of the world, and condemned in any Court of Admiralty as lawful prize, the appeal lies to certain Commissioners of Appeals, consisting of the Privy Council, and not to Judges Delegates;

legates ; and this by virtue of diverse treaties with foreign nations, by which particular Courts are established in all the maritime countries of Europe for the decision of the legality of the prizes.

The original Court in which the question of legality is triable, is the Court of Admiralty. The Court of Appeals is in effect the King's Privy Council, the Members of which are, in consequence of treaties, commissioned under the Great Seal for this purpose *.

* See the Statute of 22d Geo. II. c. 3. and 3d Blackstone's Commentaries, 69, 70.

C H A P. VII.

*Of Slaves, Estates Tail, Dower, Registering Deeds,
&c.*

Slaves, &c.

IN some of the Islands and States, Negroes are considered as *personal* estate; in others, they are of a mixed nature, and in others again as *real* estate. Where they are considered as real estate, they must be conveyed by deed, and that deed must be registered.

Estates tail,
dower, &c.

The method of barring estates tail, dower, &c. and registering deeds, differing very materially in the different Islands, it will be necessary for the practitioner to consult their respective law codes. In most, if not all of the United States, words which in our Courts constitute an estate tail, are directed by Act of Assembly to be considered as fee simple, conditional at Common Law, and consequently they know nothing of either fines or recoveries.

C H A P.

C H A P. VIII.

*Of the method of Authenticating Letters of Attorney,
Affidavits, &c. for the recovery of Debts, with
Precedents.*

ALL affidavits transmitted to the Colonies (for Affidavits, &c.
the purpose of recovering debts), must pur-
sue the directions of the Statute 5th Geo. II. c. 7.

When a power of attorney is transmitted at the
same time with an affidavit, they are both annexed
together, and certified under the common seal of
the city, borough, or town corporate, where or
next to which the person making the affidavit or
affirmation happens to reside.

Where a letter of attorney is transmitted with-
out an affidavit, it may then either be certified un-
der such common seal, as aforesaid, or it may be
executed in the presence of persons going to the
place to which the power is directed. And in
that case, one of the subscribing witnesses proves
the execution of the letter of attorney before a
Judge of the State or Colony, in which such letter
or power of attorney is intended to be enforced.

Power of
Attorney.

The

5th Geo. II.
c. 7.

The Statute, 5th Geo. II. c. 7. entitled, An Act for the more easy recovery of debts in his Majesty's Plantations and Colonies in America, enacts, " That
 " in any action or suit there depending, or there-
 " after to be brought in any Court of Law or
 " Equity in any of the said Plantations, for or re-
 " lating to any debt or account wherein any per-
 " son residing in Great Britain shall be a party, it
 " shall and may be lawful to and for the plaintiff
 " or defendant, and also to and for any witness to
 " be examined or made use of in such action or suit,
 " to verify or prove any matter of thing by affida-
 " vit, or affidavits, in writing, upon oath, or in case
 " the person making such affidavit be one of the
 " people called Quakers, then upon his or her so-
 " lemn affirmation made before any Mayor or other
 " chief Magistrate of the city, borough, or town
 " corporate in Great Britain, where or near to
 " which the person making such affidavit or
 " affirmation shall reside, and certified and trans-
 " mitted under the common seal of such city, bo-
 " rough or town corporate, or the seal of the
 " office of such Mayor or other chief Magistrate ;
 " which oath and solemn affirmation, every such
 " Mayor and chief Magistrate shall be and is here-
 " by authorized and empowered to administer :
 " And every affidavit, or affirmation, so made,
 " certified, and transmitted, shall in all such ac-
 " tions and suits be allowed to be of the same
 " force

“ force and effect as if the person or persons mak-
 “ ing the same on oath, or solemn affirmation, as
 “ aforesaid, had appeared and sworn or affirmed
 “ the matters contained in such affidavit or affir-
 “ mation (*viva voce*) in open Court, or upon a
 “ commission issued for the examination of wit-
 “ nesses, or of any party in any such action or
 “ suit respectively ; provided, that in every such
 “ affidavit or affirmation, there shall be expressed
 “ the *addition* of the party making such affidavit
 “ or affirmation, and the particular place of his
 “ or her abode.”

See the act, which is extended to debts due from
 persons in Antigua to creditors residing in Ireland
 or America, &c. provided that in every affidavit or
 affirmation there shall be expressed the addition
 of the party making the same, and the particular
 place of the witness's abode ; and that, before such
 examination, nine months notice be given in writ-
 ting to the adverse party, or his counsel, of the
 names of witnesses, and the time and place of the
 examination ; which affidavit or affirmation may
 be made before, and certified under the seal of of-
 fice, or under the private seal of the Chief Gover-
 nor, or the person in command for the time being,
 Mayor or Justice.

I

And

And by another section of the same Act of Assembly, conveyances and deeds, letters of attorney, procurations, and other powers in writing, made out of the island, with a deposition proving the same, sworn before the Lord Mayor of London, York, or Dublin, or any other Mayor or Chief Officer of any city or town corporate within Great Britain or Ireland, attested under the public seal of such city or town corporate, or under the hand and public seal of any Chief Governor or Magistrate, Lieutenant Governor, or President of the Council, of any colony in his Majesty's dominions, and annexed to the thing proved, shall be as sufficient evidence in law or equity, as if the witnesses therein named made such proof *viva voce*; provided that such deed, if concerning lands and slaves, be recorded in the Register's Office of Antigua, as the laws of that island require.

N. B. *Similar Acts of Assembly have passed in some other Colonies.*

Precedents

Precedents of different forms of Letters of Attorney.

An Affidavit under the Seal of the city of London,
for the purpose of recovering a Debt due in one
of the Colonies.

TO all to whom these presents shall come, I William Beckford, Esq; Lord Mayor of the city of London, in pursuance of an Act of Parliament made and passed in the 5th year of the reign of his late Majesty King George II. entitled, *An Act for the more easy recovery of debts in his Majesty's plantations and colonies in America*, do hereby certify, that, on the day of the date hereof, personally came and appeared before me, R. F. the deponent named in the affidavit hereunto annexed, being a person well known, and worthy of good credit, and by solemn oath which the said deponent then took before me, upon the holy Evangelists of Almighty God, did solemnly and sincerely declare, testify, and depose to be true, the several matters and things mentioned and contained in the said annexed affidavit.

In

(Seal of
the City of
London.)

*In faith and testimony whereof,
I the said Lord Mayor have caused
the seal of the office of Mayor-
alty of the said city of London to
be hereunto put and affixed, and the
several accounts mentioned and re-
ferred to in and by the said affi-
davit, to be hereunto also annexed.
Dated in London, 13th June 1763.*

H O D G E S,

*London, viz. J. W. (clerk to E. C. and J. M.
of London, merchants, and partners), maketh oath,
that he lived with the said E. C. and J. M. for
three years and upwards, and saith, that the accounts
hereunto annexed, entitled W. K's Disbursements, pur-
porting to be an Account from the Snow Elizabeth
from St Christophers, and the portlage bill for the said
Snow Elizabeth from Antigua to London, and also the
Account hereunto also annexed, entitled, Debtor, the
Owners of the Snow Elizabeth, in account with W.
K. creditor, is a true extract or copy of the same ac-
counts, as delivered in, and settled and adjusted by
the said W. K.—and that the sum of L. 87:3:10,
appearing to be the balance of the said last mentioned
account, was well and truly paid to the said W. K.
by the said E. C. and J. M. ; and that the receipt
was duly signed by the said W. K. on the original ac-
count,*

count, now in the custody of the said C. and M. And this deponent further saith, that he has carefully perused and examined the account hereunto annexed, entitled, Debtor, the Owners of the Elizabeth, W. K. commander, in account current with C. and M. creditors, with the books of account with the said E. C. and J. M. and that the same is a true extract or copy of the same account taken from the said books, and doth agree therewith: And this deponent saith, by means of his said employment, he knows the several sums of money in the said last account mentioned to be paid to W. S. and the several other persons therein named, and for postage of letters, and such other purposes as therein are specified, were all well and truly paid and disbursed by the said E. C. and J. M.; and that he, this deponent, hath carefully computed and examined the several sums charged in the said annexed account, for interest and commission; and that the same are rightly charged and computed, and are the same as usually charged and allowed in the like cases: And this deponent further saith, that he hath also perused and examined the accounts hereunto annexed, entitled, Debtors N. K. and Mr J. B. jun. in account current with C. and M. creditors, with the books of account of the said E. C. and J. M. and that the same is a true extract or copy of the same account taken from the said books, and doth agree therewith: And this deponent further saith, he knows also, that the several sums in the said annexed accounts,
mentioned

mentioned to be paid to J. C. and the several other persons therein named, for the several purposes therein mentioned, were well and truly paid by the said E. C. and J. M. accordingly; and that he, this deponent, hath computed and examined the several sums charged in the annexed account, for interest and commission, and that the same are rightly computed, and justly charged: And lastly, this deponent saith, that, to the best of this deponent's knowledge and belief, the said E. C. and J. M. have, in the said two last mentioned accounts, brought to account and given credit for all monies and effects received by them on the said accounts respectively.

J. W.

Sworn at London, 13th June 1763, before me,

WILL. BECKFORD, LORD MAYOR,

Letter of Attorney certified by the Lord Provost of Glasgow, under the Common Seal of the City.

KNOW all men, by these presents, that I J. J. Postmaster of Glasgow, and Merchant, for diverse good causes and valuable considerations me thereunto moving, have made, constituted, and appointed, and, by these presents, do make, ordain, constitute, and appoint

point C. J. of St John's, in Antigua, merchant, my true and lawful attorney for me ; and in my name, and for my use, to ask, demand, and sue for, recover and receive, of all and whoever are, or may be, indebted to me, in any of the West India or American islands belonging to Great Britain, France, Spain, Denmark; or Holland, all such sum and sums of money, debts, and duties whatsoever, which now are, or may be, due and owing to me the said J. J. by all and whoever are, or may be, indebted to me, belonging to the above-mentioned islands ; and to have, use and take all lawful ways and means, in my name, for the recovery thereof, by attachment, arrest, distress, or otherwise ; and to make and give acquittances or other discharges in my name, and generally to do and execute in the premises as fully in every respect as I myself might or could do, being personally present, and to make attornies, one or more of them, under him, for the purposes aforesaid ; and, at his pleasure, to revoke the same, hereby ratifying, confirming, and allowing all and whatsoever my said attorney shall lawfully do or cause to be done therein, by virtue of these presents. In witness whereof, I have hereto set my hand and seal this 21st day of September 1763.

J. J. (L. S.)

Signed, sealed, and delivered
in the presence of

J. G.

D. W.

At

At Glasgow, the 5th October 1763, in presence of Archibald Ingram, Esq; Lord Provost and Chief Magistrate of the said city, one of his Majesty's Justices of the Peace for the county of Lanark, appeared J. G. of the said city, merchant, who, upon his great solemn oath, taken by him before the said Provost, upon the holy Evangelists of Almighty God, depones and says, that he, this deponent, was present, and did see the within J. J. sign, seal, and for and as his true and genuine act and deed, deliver the letter of attorney within written upon the day of the date thereof: And that D. W. of the said city, merchant, was also then present; and that the name J. J. appearing at said letter of attorney as granter thereof, and seal thereto adhibited, is the proper hand-writing and seal of J. J. aforesaid; and that the names J. G. and D. W. also appearing at said letter of attorney as witnesses thereto, are of the respective proper hand-writings of this deponent and of D. W. aforesaid.

In testimony whereof, these presents are subscribed by the said deponent and by the
 (L. S.) *said Lord Provost, who has caused the common seal of the said city to be hereto affixed, date above.*

J. G.

ARCH. INGRAM.

C H A P.

C H A P. IX.

*Of the Powers, Authority, and Duties of Governors of Provinces.—Of Granting Probates, Administrations, &c. &c. **

THE Governor of every Provincial Establishment has the sole power of convening, adjourning, proroguing, and dissolving the General Assembly; he has the custody of the Great Seal, and (in most of the Islands) is sole Chancellor.

Power of the Governor, &c.

In *Barbadoes*, *Antigua*, and *Montserrat*, the Council sit as Judges in Chancery with the Governor, but the process is issued and tested in the name of the Governor.

The proceedings are similar to those in England, as they are also in the United States, except in a few trifling instances, which are varied according to local circumstances.

Proceedings similar to those in England.

K

The

* See the form of a Governor's and Vice Admiral's commission in Stokes's *Colony Constitutions*, p. 150. and that chapter throughout.

Granting probates, &c.

The Governor has the power of granting probates of wills and testaments, and administrations.

Leeward Islands, &c.

In the *Leeward Islands*, there is one Governor General and Lieutenant General of all the Islands, and there are Lieutenant Governors of the Islands of *Antigua*, *Montserrat*, *Nevis*, and *St Christopher*.

Proving wills.

In most of the West India Islands, wills are generally proved *per testes*, unless they are absent, and in that case the executor and some one makes oath before the Ordinary, of the testator's handwriting, and the executor swears that the paper produced is the last will and testament of the testator.

Where the witnesses are on the spot, the executor takes no oath, nor does he return any inventory into the Secretary's Office, but the will and probate are registered.

Where there is no subscribing witness, they proceed in the same manner as the Ecclesiastical Courts in England.

In *Jamaica*, where the subscribing witnesses live at a distance, it is usual to sue out a *dedimus*, to empower Commissioners to take the affidavit of the subscribing witnesses of the due execution.

In

In the *West Indies*, where a Government consists of many Islands, and the Governor is out of the Island where a will is to be proved, but within the Government, the President of the Island where the will is to be proved, usually takes the probate; but if the testator leaves effects in different Islands in the Government, then the will is usually proved before the Governor in chief, (as Ordinary of all the Islands,) and the will is then registered in the Island in which the testator died possessed of most property; in the same manner as in England, when the deceased has *bona notabilia* in different dioceses, the will must be proved in the Prerogative Court of the Archbishop of Canterbury.

How proved when the Governor is out of the Island.

The Governor (as Ordinary) has the power of granting administration of intestates' effects. And where an intestate leaves effects in different Islands, the Governor is usually petitioned for administration of all effects within the Government; in the same manner as application is made in England to the Prerogative Court, where the deceased had *bona notabilia*, &c.

Granting administration, &c.

The method of obtaining administration in the West Indies, is by petition to the Governor, who frequently grants it without citation. When granted, the administrator gives bond, with securities, in the Secretary's Office, faithfully to administer

Method of obtaining administration.

nister the effects, and render a true account upon oath ; a warrant of appraisement also issues, and the appraisers make an inventory and valuation of the goods and chattels, which is returned into the Secretary's Office.

No letters of administration are now granted, until previous notice of application for them is given by public advertisement.

Petition

Petition for Letters of Administration, with
the Will annexed.

ANTIGUA, *To his Excellency A. B. Esq; Cap-
tain General and Governor in Chief
in and over all his Majesty's Lee-
ward Caribbee Islands in America,
and Chancellor, Vice Admiral, and
Ordinary of the same :*

*The Humble Petition of C. D. late of the said Island
of Antigua, Gent. and M. his Wife :*

SHEWETH,

THAT E. F. late of the said Island of Antigua,
Gent. deceased, departed this life on the 10th
day of August 1768, having first made his last will
and testament nuncupative, and thereby given his
real and personal estate to your petitioner, M. who
was a sister of the half blood to the said E. F. which
said will nuncupative hath been duly proved before
your Excellency.

That

That the said E. F. not having named any person or persons as executor or executors of his said last will and testament, your petitioners are advised that it is necessary for them to take out letters of administration, with the said will and testament annexed.

Your petitioners therefore humbly pray your Excellency, that letters of administration of all and singular the goods and chattels, rights and credits, which were of the said E. F. at the time of his death, with his last will and testament annexed, may be granted to your petitioners, and the survivor of them, upon their giving the usual security into the Secretary's Office of this Island, faithfully to administer the same.

And your petitioners will ever pray, &c.

Dated 16th May 1769.

C. D.

M. D.

I consent to the above petition.

F. W.

Granted.

A. B.

Letters

Letters of Administration.

ANTIGUA. *By his Excellency A. B. Esq; Captain General and Governor in Chief in and over all his Majesty's Leeward Caribbee Islands in America, and Chancellor, Vice Admiral, and Ordinary of the same.*

WHEREAS C. D. of the said Island of Antigua, Gent. and M. his wife, by their petition to me directed, have set forth, that E. F. late of the said Island of Antigua, Gent. deceased, departed this life on the 10th day of August 1768, having first made his last will and testament nuncupative, and thereby given his real and personal estate to the petitioner M. who was a sister of the half blood to the said E. F. which said will nuncupative hath been duly proved before me.

That the said E. F. not having named any person or persons as executor or executors of his said last will and testament, the petitioners were advised, that it was necessary for them to take out letters of administration of all and singular the goods and chattels,
rights

rights and credits, which were of the said E. F. at the time of his death, with his last will and testament annexed, to be granted to the petitioners, and the survivor of them, upon their giving the usual security into the Secretary's Office of the Island, faithfully to administer the same : Administration therefore of all and singular the goods and chattels, rights and credits, which were of the said E. F. at the time of his death, with his will annexed, is hereby granted unto the said C. D. and M. his wife, they having given bond with security in the Secretary's Office of this Island, faithfully to administer the same according to law, and to render a just and true account of the administration upon oath, when they shall be thereto lawfully required.

Passed the Office.

G. P. Dep. Sec.

Given under my hand

and seal this 20th

June 1769.

A. B.

Warrant

Warrant of Appraisement.

ANTIGUA. *By his Excellency A. B. Esq; Captain General, &c. &c.*

THESE are in his Majesty's name to authorize and require you, A. B. C. D. E. F. or any three of you, according to the best of your judgments and consciences, to inventory and appraise the goods and chattels of E. F. late of the said Island of Antigua, Gent. deceased, as the same shall be shewn to you by C. D. and M. his wife, administrator and administratrix of all and singular the goods and chattels, rights and credits which were of E. F. deceased, with his will annexed, and return thereof to make into the Secretary's Office of this Island, with all convenient speed, which return you are to make, so that you may swear, if thereto lawfully required, that the same is a just and true appraisement; and for your so doing, this shall be your warrant.

Passed the Office, &c. Given under our hand, &c.

A, B,

L

The

Court of
Errors.

The Governor presides in the *Court of Errors* (of which he and the Council are Judges), to determine all appeals in the nature of writs of error from the Superior Courts of Common Law, which are tested in his name, or, in case of his absence, in the name of the President and Council.

In the *West India* Islands, the Acts of Assembly regulate and direct the mode of proceeding in appeals of writs of error,

The Court held by the Governor and Council for correcting errors in proceedings in the Superior Courts of Common Law, is called the *Court of Errors*. The writ issues returnable before the Governor and Council.

Appeals.

An appeal lies from the judgment of the Governor and Council, and from the decree of the Chancery to the King in Council, under the following restrictions :

1. No appeal shall be allowed to the Governor and Council in any civil cause, unless the debt or damages, or the sum or value appealed for, exceeds the sum of L. 300 Sterling, except the matter in question relates to the taking or demanding any duty payable to the King, or to any fee of office or annual-rent, or other such like matter or thing,

thing, where the rights in future may be bound : In all which cases, an appeal lies to the King in Council, though the immediate sum or value appealed for be of less value.

2. That in all cases of fines imposed, no appeal lies to the King in Council, except the fines so imposed amount to L, 200 Sterling.

3. Every such appeal to the Governor and Council must be made within fourteen days after judgment in the Court below ; and plaintiff in error must give security, that he will effectually prosecute his appeal or writ of error, and answer the condemnation money ; and also pay such costs and damages as shall be awarded, in case judgment below should be affirmed.

4. No appeal is allowed from the judgment of the Governor and Council, or from the decree of the Court of Chancery, to the King in his Privy Council, unless the debt, damages, or the sum or value so appealed for, exceed the sum of L. 500 Sterling, except where the matter in question, &c. be as above.

5. Such appeal to the King in Council must be within fourteen days after judgment below, and plaintiff in error must give security to prosecute his appeal or writ of error effectually, and also to answer the condemnation money, and to pay such costs

costs and damages as may be awarded, in case of the Governor's judgment or decree being affirmed.

Ascertaining
value in dis-
pute.

In the *West Indies*, provision is usually made by Act of Assembly, for directing the mode of ascertaining the value of the matter in dispute, and also in what time the writ of error shall be returnable, when a transcript of the record shall be made out, and when errors shall be assigned, and such other incidental matters in the course of the proceedings, about which the King's instructions are silent. In the *United States*, these things are provided for by rule of Court.

Method of
making up
the pro-
ceedings.

On an appeal from the Governor and Council, or from the decree of the Court of Chancery, to the King in Council, the proceedings are copied fair on large paper by the officer who has the custody of the records; which done, the said officer who has the custody of them, makes an affidavit that they are true copies, and that they have been compared with the original records. The proceedings and affidavit are then annexed together, and the Governor puts the Great Seal to them, in which state they are sent to England.

The Governor is usually named first in the commission, issued under the 11th and 12th W. III. c.

7. for the more effectual suppression of piracy, and he usually sits as President; if not, the senior Member of the Council presides.

The above statute is made perpetual by 6th Geo. I. c. 19. § 3. and is enforced by 8th Geo. I. c. 24. which last mentioned act is made perpetual by 2d Geo. II. c. 28. § 7.

The proceedings under the statute of 11th and 12th W. III. are, by the 4th sect. of that Act, directed to be according to the rules of the Civil Law, and the rules of the Court of Admiralty.

By the 4th Geo. I. c. 11. entitled, "An Act for the further preventing robbery," &c. and for declaring the law upon some points relating to pirates, it is declared (in the 7th section,) that all persons who shall commit any offence, for which they ought to be adjudged pirates, felons, or robbers, by the said Act of 11th and 12th W. III. c. 7. may be tried and adjudged for every such offence in the same manner as is directed by 28th Hen. VIII. c. 15. and shall be excluded the benefit of clergy; and by the 9th section of the 4th Geo. I. c. 11. that act is extended to America.

The Governor is also Vice-Admiral within his province, and in the time of war he issues his warrant

rant to the Judge of the Court of Admiralty to grant commissions to privateers.

By the 11th and 12th W. III. c. 12. all crimes and offences committed by any Governor, Lieut. Governor, Deputy-Governor, or Commander in Chief of any Plantation or Colony within his Majesty's dominion beyond the seas, contrary to the laws of this realm, or in force within their respective Governments, shall be heard and determined in the King's Bench in England, or before such Commissioners, and in such county of this realm, as shall be assigned by his Majesty's commission, and by good and lawful men of the same county; and that such punishments shall be inflicted on such offenders as are usually inflicted for offences of the like nature in England.

CHAP.

C H A P. X.

*Late Judicial Determinations in the Law Courts of
the United States, &c.**Anon.**Interest.*

THE question in this cause was, Whether interest should be allowed, during the war, upon a bond due from a citizen of America to a British subject?—It was given in charge to the Jury by the Chief Justice, that upon accounts which only carried interest in time of peace, the circumstances of the war were sufficient to destroy the usage; and that upon bonds and obligations, bearing interest from the nature of the contract, the interest should cease from the invasion of the British, and be revived at the date of signing the Preliminary Articles.

Com. Pleas.
Philadelphia.
1787.

A similar determination took place in Virginia; and this opinion determined many actions depending in these and other states upon the same point. †

*Anon.**Bill of Exchange.*

IN the same Court, judgment was given in an action brought by the indorsee against the acceptor

Same Court.

tor of a bill of exchange, in which the words “ *or order* ” were omitted : In which, after much investigation, the Judges were of opinion, that such bill was not negotiable, and consequently that the action could not be supported,

Witness.

JANUARY *and* GOODMAN.

Same Court.

IN the above case it was established as a principle, that where there are subscribing witnesses to a note of hand, it is necessary (as in the case of a deed) to produce them on the trial, or to give some satisfactory reason for their absence ; but if there are no witnesses, then proof of the parties' hand-writing by any indifferent person (capable of such proof) is sufficient.

This determination seems to deserve the attention of mercantile people, as the obtaining witnesses to promissory notes has commonly been considered a matter of useful precaution ; but by this determination, it may be productive of much embarrassment.

Bankruptcy.

Anon.

Com. Pleas.
New-York.

THIS case was as follows :—One of two partners in trade became insolvent, and a separate commission of bankruptcy was taken out against him, the other partner being, during the whole transaction, in good and solvent circumstances. On this

this case the question was, Whether the Commissioners, under the separate commission, were entitled to receive and distribute the joint stock of the partners, or whether the solvent partner was entitled to retain and appropriate it to the use of the company?---It was admitted by the Counsel, and declared by the Court, as an undoubted axiom, that joint estate is first responsible to separate creditors; but it seems, that, on this occasion, the Commissioners claimed all the interest of the insolvent partner in the joint estate, though they were entitled to make the distribution; while the solvent partner contended, that as he was personally answerable for the Company debts, he ought to possess the fund, out of which those debts were payable. The apparent equity of the case in favour of the latter position, gave occasion to a remark from the Court, that the execution of the bankrupt law must be extremely defective, till a controuling jurisdiction, similar to the Chancellor's in England, was here established, since it was left generally to the Commissioners to proceed as they pleased; and, upon an appeal to the Common Law, the Courts were bound by general technical rules, which might, in particular cases, militate against justice and natural equity. The forms of instituting an action created some difficulty in the present instance; and it was acknowledged by the Counsel, that the most diligent search had not en-

abled them to discover a Precedent for ascertaining, who ought to be made parties to the suit to recover the partnership debts.

This silence in the law evidently proceeds from the interposition of the Chancellor, who directs in every respect the proceedings under the commission, upon full consideration of all the circumstances of the case.—*N. B. Left undetermined.*

Habeas Corpus.

Case of TIMOTHY MATLACK, Esq;

Philadelphia.

MR MATLACK being called upon to shew what cause he had for his discharge, his Counsel, Mr Murray, opened the following objections :

“ He observed, that no parallel could be found in the annals of Pennsylvania, and scarce in those of any other country, for the continued series of oppression and injustice, which the present applicant had suffered in the course of his political transactions. That the present case was not to be considered merely as it affected the personal liberty of the applicant, (great and important as that right was,) but also as it affected every individual of the community, and the whole commonwealth. The
right

right of personal liberty is, with justice, ranked by the constitution with that of life itself; and all others are postponed to these. The words of the constitution on this subject are, "That all men are born equally free and independent, and have certain natural, inherent, and unalienable rights, among which are the enjoying and defending *life and liberty*, acquiring and possessing property, and pursuing and obtaining happiness and safety *." It is with justice ranked with the right of life; for the infringement of it involves the violation of all others. It is to no purpose that the laws have guarded the property of the citizen from invasion, if he may be wantonly dragged from the enjoyment of what he has lawfully acquired. In vain have the laws declared his right of enjoying his limbs, body, and health, if, by illegal confinement in the unhealthy damps of a prison, his constitution may be undermined with impunity. It is unnecessary to mention the authority of Precedents; it is well known—what is to-day of doubtful authority, will be to-morrow a rule for future determinations—almost a law. And where is the man who may not become the victim of a bad Precedent? There is none. Upon the protection of this right, the wealth and population

* Const. ch. 1. § 1.

lation of a country must depend. To be convinced of this, we need but turn our eyes to those countries where this right is unknown or unguarded. Are they not universally poor, and thinly peopled? Let Turkey witness. On the other hand, where this right is known and guarded, the nation is rich and populous. Of this, Britain is an eminent example. What, but this security ensured, encourages the husbandman, the artificer, and the merchant? What else can bring the foreign merchant to our port? And what, but the expectation of such liberty, causes such emigrations from Germany and other parts of Europe, notwithstanding the innumerable restraints laid by the different sovereigns to prevent it? But shall this confidence cease? Shall this expectation be disappointed? And that in Pennsylvania, which boasts the most free constitution in the world: I trust not. Happily, we have a speedy and effectual remedy provided by our laws for illegal imprisonment. This remedy is by a writ of Habeas Corpus, This remedy the applicant has pursued.

“ By this writ, the goaler is commanded to bring the body of the applicant before the Judge, before whom the writ is returnable, with the day and cause of his taking and detention: To this the goaler has made a return: I therefore take as a first principle, “ That the Judge or Justice, before whom

“ whom the party shall be brought, shall, after
 “ return made, proceed to *examine into facts re-*
 “ *lating to the circumstances of the case, and into the*
 “ *causes of such confinement,*” &c. † He shall not
 only determine on the legality of the process, but
 on an enquiry into all the circumstances of the
 case, “ do as to justice shall appertain.” What
 then is the return? That the cause of the deten-
 tion is contained in four warrants annexed to the
 writ. These warrants are executions. The ob-
 jections then necessarily divide themselves into two
 points, viz.

“ I. That these executions are not warranted by
 any legal authority. And,

“ II. That, though such authority did exist, the
 executions are in themselves illegal, unprecedent-
 ed, and void.

“ As to the first point, it is a *general* principle,
 which cannot be controverted, that no execution
 can regularly issue until the debt is ascertained by
 the verdict of a Jury, or the confession of the par-
 ty, and a judgment thereupon given. The right
 to trial by Jury, is intended as a guard to all the
 natural

† 3d vol. Laws, 442.

natural rights of a citizen, and is, perhaps, the best which could have been devised for that purpose. This mode of trial was also introduced into Pennsylvania by the first settlers from England. It was derived from the Great Charter, which was obtained by the Barons, sword in hand, from King John, and tho' often attacked by arbitrary Princes, has still maintained its ground. In Pennsylvania, it is assured to us by the constitution, which declares, that " trials shall be by Jury as heretofore *." And again, in still stronger terms, perhaps too strong for the occasion, " that, in " controversies respecting property, and in suits " between man and man, the parties have a right " to trial by Jury, which is to be held *sacred* †." The constitution having thus fixed this great right, no power on earth, not even the Legislature, can deprive a citizen of it. This is settled by the frame of Government, which, (after enumerating the powers of the Legislature,) declares, in the same section, that, " *they shall have no power to add to, alter, " abolish, or infringe any part of this constitution. ‡*" Acts of this Assembly, contrary to the constitution, being in themselves void, the Court have a power in determining, as though such act (which is no law) did not exist. Such a power is the necessary

* Const. ch. II. § 25. † Const. ch. I. § 11. ‡ Const. ch. II. § 9.

cessary consequence of their appointment to expound the law, as will appear from the maxim which is established in England. Acts of Parliament, which are against common reason, are *to be judged void* *." In the present case, there appears to have been no trial by Jury, or confession of judgment by the party. Upon what authority then have the executions issued? For an answer, we must have recourse to the executions themselves. They recite, "Whereas it is certified to us by our Comptroller-General, that Timothy Matlack, Esq; is indebted to the State of Pennsylvania in the sum, &c." A certificate of the Comptroller-General is then to be taken as the authority and ground of these executions. Upon the general principle laid down, such certificate can be no foundation for the process: But to wave for the present that principle, let us examine the point upon the Acts of Assembly as they stand. The Act which erects the office of Comptroller-General, vests most amazing powers in him. Such powers, as I believe, were never vested in one man, in any Government called free. By this Act, one man is to determine the property of his fellow-citizens: And upon such determination, and a certificate thereof filed in the office of the Prothonotary

* Wood's Inst. 10.

thonotary of the Court of Common Pleas of the proper county, an execution is to issue. There is, however, an apparent restriction in this Act; the settlement of the Comptroller-General must be laid before the Supreme Executive Council for their approbation. Now, in the present case, I apprehend, the Comptroller-General must shew, that the settlement was laid before the Council, and that they approved of it. Some of the exceptionable part of this Act is repealed by a subsequent one. By this it is enacted, "That in every case
 " where the Comptroller-General shall settle an
 " account, and transmit such settlement to the
 " Supreme Executive Council for their approba-
 " tion, and if the party, whose account shall be
 " thus settled and transmitted, be satisfied there-
 " with, it shall and may be lawful, for such party,
 " in one month after notice given by the Comp-
 " troller-General, that the settlement is approved
 " of by Council, but not afterwards, to appeal,"
 &c. * Has the Comptroller given the notice in consequence of this Act? If he has, let the proof of that be brought forward: It must be done by an affidavit of the person serving the notice. An application of the maxim, that all things are to be presumed to be solemnly and legally done, cannot
 in

* 3d vol. Laws, 444.

in this case be made. The proof of service of the notice depends on verbal testimony. If these proceedings had been on record, the party might have had recourse to them: He might have shewn an irregularity or deficiency, if any such were. In the present case it is impossible to prove that no notice was served, therefore the proof of the notice must be made out by the State. This is all that appears necessary to offer on the first point, in the present stage of the business.

“ As to the second point which was made in this case, that the executions are illegal, unprecedented and void :

“ The first objection that occurs upon these executions is their number. Four executions are issued, upon each of which the applicant is said to be indebted to the State in a particular sum. This is contrary to reason and the known practice. “ When
 “ a plaintiff has a judgment, he has it in his option to sue out what kind of execution he pleases ;
 “ *but he cannot regularly take out two different executions on the same judgment, nor a second, but on*
 “ *failure of satisfaction on the first **.” Has the Comptroller a power thus to destroy any man for whom
 N . he

* 2 Bach. 253.

he may entertain an enmity ? May he, by frittering a debt due to the State, and issuing out an execution upon every part, accumulate costs at his pleasure. It is not warranted by the former laws, nor by the present Act. Might not the Sheriff, upon one execution, have distrained the goods of the applicant ? upon a second, have the land seized on ? upon a third, have taken his body ? upon the fourth, they must have left him his soul and conscious integrity : those were beyond their reach. This is the most unparalleled usurpation and abuse of power ever known. To one of these executions another fatal objection is, that it is returnable upon no certain day : “ And how you shall execute this writ, make known to us and to our Comptroller-General on the 6th day of June, *” omitting *next* : So that is uncertain whether it is returnable on the 6th day of June in the year 1787, in the year 1788, or any other year. To this objection no authority need be cited. It is too clear to need one. And lastly, these executions command the Sheriff to “ distrain the goods” of the applicant, and, in default of goods, “ to cause the debt to be levied and made of his lands,” “ and if no lands are to be found in his bailiwick,” then he is commanded to take the body. It was formerly held,

* See the Execution.

held, " that if a person died in execution, the
 " plaintiff had no further remedy, because *he de-*
 " *termined his choice by this kind of execution,*
 " *which, affecting a man's liberty, is esteemed the*
 " *highest and most rigid in the law **." This, tho'
 altered by the Stat. 21. Jac. 1. will shew how far
 this principle has been carried, and how different
 the spirit of those determinations are from the pro-
 ceeding in the present case. As a distinction may
 be attempted between the executions for a private
 person, and for the Commonwealth, it will be pro-
 per to examine what was the King's prerogative
 in this respect. " At common law, the King
 " might by his prerogative have execution of his
 " debtor's body, goods, and lands; *but still, un-*
 " *der this restriction, that the lands were not ex-*
 " *tendible, while the chattels were sufficient, and*
 " *the debtor ready to answer the debt †.*" These
 expressions are rather inaccurate; but the follow-
 ing case will serve as an explanation.

" The King may have execution of his debtor's
 " lands and chattels, *or* of his body ‡." So that
 it is evident that the King could not have execu-
 tion of his debtor's lands, chattels, and body *at the*
same time. But to put this matter still farther, if
 possible,

* 2 Bac. 254. Booth's Treatise, 191. † Bac. 329. ‡ Bro. 29.

possible, from doubt, no execution like the present can be found in the books of entries so early as Coke, or so late as Lilly. If then no such execution existed before the passing the act for the settlement of the public accounts, neither does it exist under that act. This act provides, That the body of a debtor of the Commonwealth " shall be " liable to be taken and imprisoned *by warrant* " *under the hand* and seal of the Prothonotary of " the Court," &c. * " *or*"---(not "*and*," but speaking in the disjunctive) " his goods and chattels shall be distrained, and sold thirty days " from such distraining" " *by warrant, &c.* * " Here the act distinguishes between the warrant for the body and the warrant for the distress, "*and* " *if other property cannot be found* *," a return must first be made that no other property can be found, " the lands may be taken, &c. *by virtue of a writ of fieri facias, &c.* * " Here is a known and precise term made use of by the act. A writ of common use, and of a form fixed and established by long practice, is directed to issue, " if no other property can be found." By these words of the act, the intention of the Legislature is evident. It follows, as an unavoidable consequence of what
has

* See the execution.

has been said, that these executions are illegal, unprecedented, and void.

“ To conclude, if your Honour is of opinion that the applicant has had these executions issued against him without a trial by Jury, without having an opportunity of obtaining such a trial, and without having had notice of the proceedings before Council, if any such proceedings have been, you will no doubt direct his discharge upon the principle, that the executions are not founded upon any legal authority; and if those executions, as I think is fully made evident, are illegal, as *four* have issued when only one ought, and as one of them is not returnable on any certain day---and if they are illegal and unprecedented, as being against the goods, lands, and body, your Honour will direct the discharge of the applicant from this void process. Here the case will for the present be rested, until the Comptroller-General shall shew any thing which may call for a reply.”

Mr Comptroller then desired to be heard a few words. He produced a number of papers, observing, “ Here are Mr Matlack’s accounts, as settled by me and approved by Council. The proceedings in this case have been the same that are always practised. The accounts are indorsed, “ Read and approved, J. A. and an entry made in “ the Council books.”

The

The Comptroller here stopping, *Mr Murray* observed, that the question was not what had been the Comptroller General's practice, but what was legal? That the Comptroller could not justify proceedings illegally or irregularly in Mr Matlack's case, because he had proceeded illegally or irregularly in other cases.

Judge Shippen. "I enquire now into facts. Mr Murray observed early in what he said, the necessity of notice to be given to the party, of the settlement by the Comptroller General, and the approbation of Council. A man must not be deprived of so important a right as that of trial by Jury, without his own default. The notice must be proven."

The Comptroller General then went to his office, and returned with a paper which he said was a letter from General Wayne. This he offered as evidence to prove that the notice was given to Mr Matlack, in Savannah, in the State of Georgia.

Judge Shippen. "That will not do. Whatever dependence I might put in General Wayne's word as a gentleman, yet, in my judicial capacity, I must have evidence. Had this notice been proven, it would then have been a subject of some consideration,

fideration, how far a notice served in Georgia, from whence the party could not appeal within the month, would have been good. Upon the executions I give no opinion, as the matter is determined on the first point. Care, however, should be taken in the form of them."

Mr Matlack was accordingly discharged.

F I N I S.

(12)

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